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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,563	06/02/2006	Michael Gavin Proctor	71,049-012	6206

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HOWARD & HOWARD ATTORNEYS PLLC
450 West Fourth Street
Royal Oak, MI 48067

EXAMINER

MOORE, MARGARET G

ART UNIT	PAPER NUMBER
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1796

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08/11/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Mailed :
In re Application of
Proctor et al.
Serial No. 10/581,563
Filed: June 2, 2006
For: METHOD OF MAKING KAOLIN CONTAINING
SILICONE RUBBER COMPOSITIONS

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:
DECISION ON
:
PETITION
:

This is a decision on Appellants' Petition under 37 CFR 1.182, 1.183 but is also being treated under 37 CFR 1.181. Appellants request entry of evidence submitted after the Examiner's Answer.

Appellants assert that the Examiner's Answer raised the issue that the factual statements of the Declarant set forth in the Declaration could not be reviewed without additional evidence that corroborated and supported these statements.

A review of the record shows that the Examiner initially addressed the Declaration submitted on April 27, 2009 in the non-final office action dated June 29, 2009. Applicants filed an Appeal Brief after this office action even though the Examiner's action was non-final, however, because the claims were twice rejected Applicants were entitled to file an appeal brief. Appellants' arguments in the Brief relied on the Declaration. The Examiner raised a number of issues with Applicants' declaration that were in response to the arguments.

Affidavits or other evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i) and 41.50(b)(1). Appellants request does not fall under the permitted exceptions. A review of the record does not indicate a need for a suspension of the rules in extraordinary situations under 37 CFR 1.183. Applicant asserts that it would be inequitable to require Applicant to restart the prosecution process. The record indicates that it was Applicant that terminated the prosecution process with the filing of an Appeal Brief after a non-final action. Appellants request for a suspension of the rules is denied.

DECISION

The petition is **DENIED**.

/W. GARY JONES/
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